

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

AMAZON.COM, INC., et al.,	:	
	:	
Plaintiffs,	:	Civil Action
	:	No. 1:20-cv-00484
v.	:	
	:	
WDC HOLDINGS LLC, et al.,	:	April 29, 2022
	:	10:05 a.m.
	:	
Defendants.	:	
.....	:	

**TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE THERESA BUCHANAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE**

APPEARANCES:

For Defendants Watson:	JEFFREY HAMLIN, ESQ. IFRAH LAW 1717 Pennsylvania Avenue NW Suite 650 Washington, D.C. 20006
For Defendant IPI:	CHARLES CONNOLLY, ESQ. AKIN GUMP STRAUSS HAUER & FELD LLP 2001 K Street NW Washington, D.C. 20006
Court Reporter:	Tonia Harris, RPR Official Court Reporter United States District Court 401 Courthouse Square Alexandria, VA 22314

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1 THE COURTROOM DEPUTY: Amazon.com, Inc., et al.
2 vs. WDC Holdings LLC, et al. Case number 20-cv-484.

3 MR. CALHOUN: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. CALHOUN: George Calhoun and Jeff Hamlin for
6 the Watson defendants, the movants.

7 THE COURT: All right.

8 MR. CONNOLLY: Good morning, Your Honor. Charles
9 Connolly and Erica Holland on behalf of the nonparty, IPI,
10 respondent.

11 THE COURT: Good morning. Let me ask just a
12 general question, and I'm not sure who can address this
13 best, but what is exactly Amazon's data retention policy?
14 It seems to me that as of April of 2020, they should have
15 been retaining everything, shouldn't they? Does anybody
16 know?

17 MR. CALHOUN: I believe we have one of Amazon's
18 lawyers in the courtroom, Your Honor, but our understanding
19 is they've automatic -- I agree with you, they should be
20 retaining everything.

21 THE COURT: Mm-hmm.

22 MR. CALHOUN: There's a mismatch between what
23 Amazon says they had produced to us and what IPI says they
24 have.

25 THE COURT: Mm-hmm.

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1 MR. CALHOUN: It's either --

2 THE COURT: Mismatch in which way?

3 MR. CALHOUN: IPI has more than what Amazon --

4 THE COURT: Are we talking about pre-April 2020
5 or post-April 2020?

6 MR. CALHOUN: Both, Your Honor.

7 THE COURT: Okay. All right. Is there anything
8 that you want to add to your motion?

9 MR. CALHOUN: Your Honor, the only thing I would
10 add is there's some confusion over what we're looking for
11 from Akin Gump documents. I did want to make it clear that
12 we are not looking for Akin Gump-IPI communications. The
13 only thing we need from Akin Gump is to the extent they
14 were negotiating with Amazon on behalf of IPI, the
15 communications between Amazon and IPI that were done via
16 counsel, we'd like those. So to the extent they're saying
17 we have to review all these documents, I don't think that's
18 really true. They just need the third-party exchanges.
19 We're not looking for any of the privileged documents.

20 THE COURT: Well, I really am -- I'm struggling
21 with your request. When I look at the actual request,
22 apart from your arguments about this, number 1, document
23 request number 1 says, "All documents and communications
24 relating to defendants." Well, that's wildly overbroad.
25 So when we go then to number 2, you say the same -- "All

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1 documents and communications relating to plaintiffs
2 including, but not limited to, all documents and
3 communications relating to the nine leases." Well, the
4 nine leases is one thing, but, again, in the context of
5 just "All documents and communications relating to
6 plaintiffs," it's just, again, wildly overbroad.

7 The termination is, you know, essentially okay.
8 Your continued relations, I'm not really quite sure why the
9 negotiations and the drafts and the final agreements or
10 contracts are relevant. I mean, this kind of ties back, I
11 think, to what I ruled before in that the final document is
12 relevant in terms of if you're talking about damages, which
13 I think you are, but the drafts and negotiations and all
14 that, I just don't think are really probative of what the
15 damages are.

16 MR. CALHOUN: Your Honor, if I could respond to
17 that.

18 THE COURT: Sure.

19 MR. CALHOUN: The reason we want to see the
20 communications back and forth is because we want to see if
21 there are other *quid pro quos* involved in that negotiation,
22 and what the considerations were --

23 THE COURT: Wouldn't that be part of the
24 contract? If there's a piece of this that it's contingent
25 on, surely, it would be embodied in a contract. They

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1 wouldn't just rely on --

2 MR. CALHOUN: But they could have altered other
3 contracts in addition to the lease contracts to which we
4 had --

5 THE COURT: Well, why don't you ask that?

6 MR. CALHOUN: Well, we will, Your Honor, but we
7 want to -- we want to have the documents before we depose
8 them. That's the issue.

9 THE COURT: But you could ask that in an
10 interrogatory rather than asking for what could be
11 hundreds, thousands of documents. So why not -- if that --
12 if that's really what you're seeking, why not ask that.

13 MR. CALHOUN: We can give them a supplemental
14 interrogatory, Your Honor, we want to see all of them,
15 obviously, because we did --

16 THE COURT: But I don't think that -- the problem
17 I am having with this also is that this is a third party.
18 And I know you say that they were, of course, involved in
19 all of this, but that doesn't mean that I think -- I have a
20 problem -- I would have a problem with this even if this
21 was -- this was a non- -- if it was a party. It's just so
22 broad. And who are -- you have to tell me who are
23 Christian Kirschner, Rodney Atherton, and Tim Lorman,
24 Informant No. 1, Patricia Watson, Kyle Ramstetter and Will
25 Camenson; who are these people?

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1 MR. CALHOUN: So those are various people who are
2 engaged in some of these transactions for allegations
3 involved in the complaint. They're not all defendants or
4 parties of the case, although Amazon is seeking to add some
5 of those defendants to the case.

6 THE COURT: But, again, I guess -- and I'm having
7 trouble with this "all documents and communications." Have
8 you all talked about -- and I don't know what format they
9 have these documents in, but since they were talking about
10 looking at who was included in the top line, are these in a
11 searchable format; have you all talked about keyword
12 searches?

13 MR. CALHOUN: My understanding is that they are
14 in a searchable format, and that was, you know, the burden
15 piece. The top line piece I thought was fairly -- it would
16 be fairly easy to resolve because those, by definition,
17 aren't privileged documents.

18 THE COURT: We're not talking about privilege.
19 I'm just talking about the scope.

20 MR. CALHOUN: I understand the scope issue. I
21 was thinking about the burden response, which would be
22 difficult to produce these. If they've done, which I think
23 they have a search for, these are the documents that are
24 top line communications.

25 THE COURT: We're talking about thousands and

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1 thousands of documents, and if you have keyword searches
2 and you get a certain number of hits that make sense to
3 produce, that's a, you know, a reasonable narrowing. So
4 you haven't talked about key word searches.

5 MR. CALHOUN: I don't -- we have not had those
6 conversations, Your Honor.

7 THE COURT: Okay. All right. Is there anything
8 else you'd like to add?

9 MR. CALHOUN: No, Your Honor.

10 THE COURT: Okay. Would you like to add anything
11 on behalf of third party?

12 MR. CONNOLLY: Thank you, Your Honor, just two
13 points. First, to respond to your most recent question to
14 counsel. On behalf of IPI, we created search terms
15 ourselves.

16 THE COURT: Okay.

17 MR. CONNOLLY: And, in fact, we have, although
18 it's quite voluminous, we did produce documents responsive
19 to that third requests, because at least we're able to
20 figure out something narrow to create search terms.

21 THE COURT: All right. Good.

22 MR. CONNOLLY: With respect to the question about
23 these *quid pro quo* negotiations, I'd only add the obvious,
24 which is whatever their concerns are about Amazon's data
25 retention, we have no sense of those. Those communications

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1 he indicated he wants are between Akin Gump as counsel for
2 IPI, and Gibson Dunn as counsel to Amazon. Gibson Dunn
3 certainly would have these documents. They're part of a
4 party and I think the request would be best directed to
5 them.

6 Last, Your Honor, last point I just flagged
7 because it goes to your first point about the overbreadth
8 of the subpoena, and this is in our brief, but it wasn't
9 flagged, and I don't know if it was directly addressed by
10 counsel in a reply on page 17. Their request is so broad
11 that one of the documents had come back as responsive to
12 request as drafted, are these spreadsheets. There are
13 hundreds if not thousands of them. They may have one line
14 about an IPI -- I'm sorry, Northstar-related deal, and it's
15 all data, about all the other data construction deals that
16 IPI does, because this is their entire business. And the
17 amount of time and effort it would take to redact that
18 nonrelevant information, according to business sensitive,
19 is hundreds and hundreds of hours. And they're otherwise
20 irrelevant to the issues in this case.

21 THE COURT: So how -- specifically, how would you
22 propose narrowing the search to eliminate those kinds of
23 hits?

24 MR. CONNOLLY: I think, Your Honor, I would say
25 that we can pull those out of our database. We know what

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1 the spreadsheets are, and we can just pull those out and
2 just not produce them. The difference is being able to
3 pull them in the initial -- from the 535,000 documents into
4 a set that hit our search terms, which is broad, then we
5 would review them to figure out if they're responsive or
6 not or protected by privilege. These documents hit our
7 search terms, but in reviewing them, would realize it's
8 just a one line -- dozens and dozens and dozens of pages of
9 data and Excel spreadsheets. There's no technological way
10 to easily redact them. It's incredibly sensitive business
11 information --

12 THE COURT: Is that the one particular part that
13 you're concerned about then?

14 MR. CONNOLLY: Yes. That's one example. Our
15 papers address three of the buckets.

16 THE COURT: Right.

17 MR. CONNOLLY: But that's one example of how the
18 overbreadth of their subpoena creates incredible amount of
19 burden for our client, and that's one example of a document
20 that is technically responsive to the subpoena. But when
21 you take, independent of everything else, probably a
22 hundred or plus hours to redact those things and produce
23 them.

24 THE COURT: Okay. All right. Thank you. I
25 guess I'd like to hear back from the defendants in that you

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1 really haven't proposed an alternative here to the -- to
2 IPI's counsel as to how to narrow it. You just are to --
3 we'll start from the premise that I'm finding that these
4 are overbroad. They are. I could just strike them and
5 say, No, you can't have any of this.

6 They proposed a solution which I think on its
7 face seems reasonable, but I haven't heard anything from
8 you as to something that you think would narrow this
9 sufficiently and still get you what you want, because
10 there's no point in having them produce something like that
11 which contains all those spreadsheets.

12 MR. CALHOUN: No, Your Honor. And as always, as
13 requesting parties, there's so many disadvantages we don't
14 know exactly what they have, and obviously --

15 THE COURT: Yeah, but you haven't really proposed
16 any kind of narrowing here. That's my problem. I mean,
17 I'm not going to rewrite these for you. So here's what I'm
18 faced with, frankly, is either you accept their proposal,
19 which I think on its face is reasonable, or you tell me
20 something small in addition to that that you really need
21 that would help you out. I'm just -- I mean you're giving
22 me no alternative here. Either I go with what they say or
23 I strike them completely, which I don't want to do because
24 they have a proposal that seems reasonable. So what
25 specifically, if anything, do you actually need that's

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1 narrowly tailored in addition to what they've proposed?

2 MR. CALHOUN: Your Honor, I would ask that they
3 produce the communications with Amazon.

4 THE COURT: But, again, you're just talking about
5 communications. That's -- no, that's like a blank no,
6 okay? What's your next idea?

7 MR. CALHOUN: All right. Bear with me one
8 minute, Your Honor.

9 So the other thing that we ask for, Your Honor,
10 that we think shouldn't be difficult for our scope is the
11 other data center deals they have --

12 THE COURT: That, I can -- I don't understand
13 what that would have to do with anything, because, I mean,
14 so that they had other data centers that they leased. You
15 know, all those leases have got to be based on so many
16 variables, I don't see how they would be comparators to the
17 leases that they did sign.

18 MR. CALHOUN: Well, we asked for Amazon leases in
19 Virginia, so it's -- we didn't ask for --

20 THE COURT: Why? I mean what relevance do they
21 have to --

22 MR. CALHOUN: Because --

23 THE COURT: -- the other leases?

24 MR. CALHOUN: -- one of the allegations, Your
25 Honor, is that our leases were not market.

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1 THE COURT: Were not what?

2 MR. CALHOUN: They weren't market based, and so
3 those provide other --

4 THE COURT: Yeah, but I mean I guess I get what
5 you're saying. But if you've got a lease, just for
6 instance, let me put it this way, if you've got a house in
7 Alexandria, then you've got a house way out in Dumfries and
8 they're the same square feet, they're not going to be the
9 same price. And so, when you've got a data center here and
10 a data center there, I don't see how you can compare them
11 in terms of value when we all know that everything in
12 Northern Virginia wildly varies based on exactly where it's
13 located.

14 MR. CALHOUN: Well, that's certainly true for
15 residential or commercial real estate. I think data real
16 estate is a little different, Your Honor.

17 THE COURT: How?

18 MR. CALHOUN: It's really based, as I understand
19 it, on its access to the various --

20 THE COURT: Well, that's the same thing. I mean
21 location, location, location. So I'm not going to allow
22 the other data centers, no. You can have information about
23 these, but not the others.

24 MR. CALHOUN: It's fine, Your Honor. If we have
25 a consistent ruling that they can't introduce other

1 evidence --

2 THE COURT: I'm not talking about Amazon. I'm
3 talking about a nonparty here. Because later on, if Amazon
4 thinks that it can rely on other data center prices,
5 they're going to have to produce the information to you to
6 show why that's relevant, and I don't think you need it
7 from a third party.

8 MR. CALHOUN: Fair enough, Your Honor. Off the
9 top of my head, Your Honor, I don't know if I can come up
10 with the terms to narrow it.

11 THE COURT: Okay.

12 MR. CALHOUN: I certainly would like to give it a
13 shot.

14 THE COURT: I think we have. So I'm going to go
15 ahead and go with the IPI's proposal as how to narrow the
16 scope of these document requests. They are overbroad and,
17 you know, I've got to rule on the motion today and I don't
18 really see anyway of -- well, and you haven't come up with
19 any other way of working this out, so I think kicking the
20 can down the road doesn't help. The time for that has
21 already past.

22 All right. Anything else this morning?

23 MR. CALHOUN: No, Your Honor.

24 THE COURT: All right. Court stands in recess.

25 (Court proceedings concluded at 10:18 a.m.)

CERTIFICATE OF REPORTER

I, Tonia Harris, an Official Court Reporter for the Eastern District of Virginia, do hereby certify that I reported from the Court's FTR recording, in my official capacity, the proceedings had and testimony adduced upon the Motion hearing in the case of the **AMAZON.COM, INC., et al. versus WDC HOLDINGS LLC, et al.** Civil Action No.: 1:20-cv-484, in said court on the 29th day of April, 2022.

I further certify that the foregoing 14 pages constitute the official transcript of said proceedings.

In witness whereof, I have hereto subscribed my name, this May 9, 2022.



Tonia M. Harris, RPR
Official Court Reporter